

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JACK C. CONROY,

Petitioner,

vs.

UNITED STATES MARSHAL, et al.,

Respondents.

No. CV 08-0182-PHX-MHM (JRI)

ORDER

Petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on January 29, 2008, claiming (1) that he is being held pursuant to federal detainers issued by the U.S. Marshals Service on April 23, 2002 and March 16, 2004, (2) that his detention thereunder is a violation of due process, (3) that he has been denied his right to counsel, and (4) that he was denied a “Rule 8 Hearing,” presumably a speedy trial hearing pursuant to Arizona Rule of Criminal Procedure 8.1 *et seq.* (Dkt. #1). On May 30, 2008, the U.S. Marshals Service filed an Answer and Motion to Dismiss or in the alternative Motion for Summary Judgment, asserting that Petitioner was not in custody pursuant to a federal detainer, but was held pursuant to state prosecutions, and that any challenge to his custody could only be filed under 28 U.S.C. § 2255. (Dkt. #13). Defendant Arpaio filed a proper Joinder to the Answer and Motion to Dismiss filed by the U.S. Marshals Service on July 25, 2008. (Dkt. #22). In addition, on August 11, 2008, Petitioner filed a Motion

1 for Request for Transfer, seeking to be transferred to federal custody to answer charges of
2 violation of his supervised release. (Dkt. #27). On March 6, 2009, the Magistrate Judge
3 issued his Report and Recommendation recommending that the petition be dismissed for
4 failing to establish any grounds for habeas relief and the Motion to Transfer be denied as
5 moot. (Dkt. #38).

6 In his Report and Recommendation the Magistrate Judge advised the parties that
7 they had ten (10) days from the date of service of a copy of the Report and
8 Recommendation within which to file specific written objections with the Court. The
9 time to file such objections has since expired and no objections to the Report and
10 Recommendation have been filed. Failure to timely file objections to any factual or legal
11 determination of the Magistrate Judge may be considered a waiver of a party's right to *de*
12 *novi* consideration of the issues. See United States v. Reyna-Tapia, 328 F.3d 1114, 1121
13 (9th Cir. 2003) (en banc) ("The district judge must review the magistrate judge's findings
14 and recommendations *de novo* if objection is made, but not otherwise."); see 28 U.S.C. §
15 636(b)(1)(C) ("A judge of the court shall make a *de novo* determination of those portions
16 of the report or specified proposed findings or recommendations to which objection is
17 made."); Jones v. Wood, 207 F.3d 557, 562 n.2 (9th Cir. 2000) ("Failure to object to a
18 magistrate judge's recommendation waives all objections to the judge's findings of fact.").

19 After a complete and independent review of the issues presented, the Court finds
20 itself in agreement with the Report and Recommendation of the Magistrate Judge. To the
21 extent that Petitioner challenges any detention or action in relation to his federal
22 conviction, he may not do so pursuant to 28 U.S.C. § 2255, not 28 U.S.C. § 2241. See
23 Lorensten v. Hood, 223 F.3d 950, 953 (9th Cir. 2000). In addition, Petitioner fails to
24 establish that § 2255 is insufficient to address any objection he may have to his federal
25 proceedings or the federal detainers. To the extent that Petitioner challenges his detention
26 by state authorities, although Petitioner's original sentence was vacated after the trial
27 court found that Petitioner's plea was not knowingly and intelligently made, Petitioner's
28 original chargers were reinstated by the trial court, and he is currently being held in state

1 custody by state authorities as a pretrial detainee. However, none of Petitioner's grounds
2 for relief establish any impropriety with regard to his state custody as a pretrial detainee.

3 **Accordingly,**

4 **IT IS HEREBY ORDERED** adopting the Report and Recommendation of the
5 Magistrate Judge (Dkt. #38) as the order of this Court.

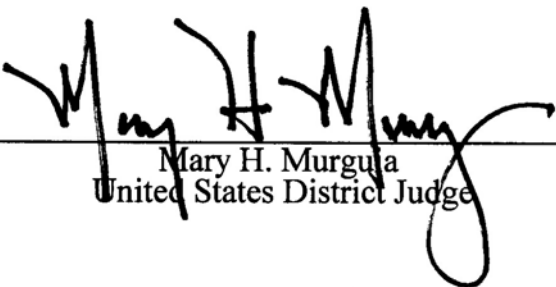
6 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus is
7 DENIED. (Dkt. #1).

8 **IT IS FURTHER ORDERED** that Petitioner's Motion for Request for Transfer is
9 DENIED as moot. (Dkt. #27).

10 **IT IS FURTHER ORDERED** that Respondent's Motion to Dismiss, or in the
11 alternative Motion for Summary Judgment, is DENIED as moot. (Dkt. #32).

12 DATED this 24th day of March, 2009.

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Mary H. Murgula
United States District Judge